Judge: Hon. Samuel J. Steiner
Chapter: Chapter 11
Hearing Date: March 11, 2011
Hearing Time: 9:30 a.m.
Hearing Site: 700 Stewart St., #8206
Seattle, WA 98101

UNITED STATES BANKRUPTCY COURT FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE

In re: **ADAM GROSSMAN,** **Debtor.**	Case No. 10-19817 **CHAPTER 11 TRUSTEE'S OBJECTION TO THE DEBTOR'S MOTION TO CONVERT CASE FROM CHAPTER 11 TO CHAPTER 13 AND REPLY**

RONALD G. BROWN, the Chapter 11 Trustee in this case, by and through his undersigned counsel, objects to the debtor's motion to convert his case from a chapter 11 to a chapter 13 and replies to the debtor's objection to the Trustee's Motion seeking conversion from a chapter 11 to a chapter 7 as set forth below.

The debtor does not really object to the Trustee's Motion to convert the case from a Chapter 11 to a Chapter 7 ("Trustee's Motion") other than to say he would prefer that the case be converted to a chapter 13.

The debtor does not qualify for a Chapter 13

A. The debtor exceeds the debt limit set forth in section 109

The debtor does not qualify for a Chapter 13 as he exceeds the debt limits set forth in section 109 of the Bankruptcy Code and therefore does not qualify to file a chapter 13. The debtor's Amended Schedule D (docket #39) lists secured debt of $1,234,758. Section 109 prohibits the filing a chapter 13 for anyone who owes more than $1,081,400 in secured debt.

The debtor amended his schedule D (docket #96) on March 4, 2011 to delete the following three secured creditors:

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Creditor's Name	Address of Property Securing Claim	Amount
Bugni Law Firm	20710 Glennwood Drive Cottonwood, CA	$300,000.00
Citi Mortgage	6821- 39th Avenue NE Seattle, WA 98115	$605,000.00
Beth Shalom Preschool	773 Metro Way Redding, CA	$16,000.00

The debtor contends that the King County Superior Court Judge awarded the wife these properties in the divorce decree and the obligations associated therewith; and as such, he is no longer liable for these obligations. This statement is both factually and legally incorrect. A true and correct copy of the Decree of Dissolution ("Decree") is attached as Exhibit 1, a true and correct copy of the Order Denying Reconsideration is attached as Exhibit "2", and the Order Amending Decree Nunc Pro Tunc to Correct Clerical Error is attached hereto as Exhibit "3" to the Declaration of Denice Moewes filed simultaneously herewith ("Moewes Declaration"). A state court judge cannot alter the contractual arrangements between the lender and its obligors and as such the debtor remains liable on the secured debt absent a release from the lender.

Paragraph 3.2.1 of the Decree awards the 6821 Property to the wife, but there is no language indicating that the lender has to release the husband from his contractual obligation. The debtor has not produced a release. As such, the debtor does remain liable on the $605,000 obligation to Citi Mortgage.

Paragraph 3.2.3 of the Decree awards the 20710 Glenview Drive property to the Debtor and as such his claim that the property now belongs to the wife are just false. The debtor remains liable on the Bugni Law Firm obligation of $300,000.00.

Paragraph 3.2.5 awards the 773 Metro Property to the Debtor as well. Thus there is no reason that the obligation associated therewith of $16,000.00 would no longer be a secured liability of the debtor.

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In addition, it does not appear that the amount of the obligations the debtor lists on his amended schedules are accurate.

Creditor	Amount Debtor Lists as Owing	Amount Owing per Deed of Trust
Terrington Davies LLC	Not listed on schedules	$18,000.00
Abraham Wyner	$10,000.00	$15,000.00
Lisa Kerith	$10,000.00	$12,000.00
Jill & Bryan Reynolds	$10,000.00	$25,000.00

See Moewes Declaration, Exhibit “4” – “7” and docket #16, 39, and 96.

The debtor clearly exceeds the debt limits set forth in section 109 of the Code and as such does not qualify to be a chapter 13 debtor.

B. *Debtor has no income from which to fund a plan*

Secondly, the debtor does not qualify for a chapter 13 because he has no income from which to fund a plan. The only income listed on the debtor’s Schedule I is $2,200.00 realized from the rental of real property located in California. The debtor’s schedule J lists monthly expenses of $6,920.41 leaving a monthly deficit of $4,720.41. There was an amended schedule J filed on October 28, 2010 under docket #40, however the amount of the expenses differs by 20 cents. The I schedule has not been amended. The debtor states in his declaration in support of his motion to convert this case to a chapter 13 that he has just obtained a position at a real estate firm. The debtor does not state which real estate firm, what position he has been hired for, when he starts, his monthly compensation and expenses and whether the job is commission only. A search of the Washington Department of Licensing reflects that Mr. Grossman does not now, nor has he ever been a broker or agent. A copy of the search of Washington Dept of Licensing records is attached to the Declaration of Denice Moewes as Exhibit “8”. As of right now the only evidence this Court can rely upon regarding the debtor’s income are his filed

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schedules I and J which clearly demonstrate that the debtor does not have any income from which to fund a chapter 13 plan.

The debtor makes the statement that he believes he can confirm a chapter 13 plan, but he failed to file a chapter 13 plan from which the Court and the Trustee could ascertain if this is true. Based on the fact that the debtor is running at a monthly deficit in excess of $4,000.00 per month the Trustee seriously doubts the veracity of this unsupported statement.

Mr. Grossman also does not meet the requirements of section 1112 which requires that the debtor consent to the conversion. The Trustee steps into the shoes of the debtor and as such the Trustee must consent to the conversion of the case to a chapter 13. The Trustee does not consent.

This Court previously ordered the debtor to produce a large number of documents, including documentation from which the recipients of fraudulent transfers could be ascertained. Those documents were not produced and for this reason and others, a trustee was appointed. To date, these documents have not been produced to the Trustee by the debtor.

In the Trustee's Motion he requests that this Court order the property manager in California, an old family friend of the debtor's who refuses to cooperate with the trustee, to turnover the rental income to the trustee and provide an accounting of how the rental income she has been collecting since the Petition Date has been disbursed. In response, the debtor filed a motion to convert this case to a chapter 13. The debtor's new found desire to convert to a chapter 13 rings hollow. It is the Trustee's belief that the debtor is merely asking for conversion in an attempt to thwart any and all actions by the trustee to investigate his assets, control and liquidate those assets and investigate what are likely to be a large number of avoidance actions.

The debtor contends in his Objection to the Trustee's Motion that his failure to file monthly reports should not be deemed bad faith because the debtor's wife has all his records and that is the reason he cannot file his monthly reports. This is just another baseless excuse by the debtor for failing to fulfill the duties he is charged with. The debtor and his wife have been separated since April 2009

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and they live at two separate addresses. Clearly the debtor's ex-wife does not have the debtor's post-petition records. That this allegation was set out before this court in a pleading defies logic. The allegation is just simply false. In fact, it appears that the debtor consistently ignores court orders. See Exhibit 1, paragraph 3.15 attached to the Declaration of Denice Moewes.

The Debtor's motion to convert this case to a chapter 13 should be denied.

Dated this 9th day of March, 2011.

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/s/ Denice E. Moewes
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